

13.01.2021
S/L No. 27
Court No.12
s.biswas

MAT 796 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020

Kandi Raj College & Anr.
Vs.
Chandan Chatterjee & Ors.

(Through Video Conference)

Ms. Rima Das

... ... for the appellants

Mr. Pratip Kumar Chatterjee

Mr. Chittopriya Ghosh

... ... for the writ petitioner/respondent.

The appeal and applications are treated as on the day's list and disposed of by this common order with the consent of the parties.

This appeal has arisen out of the order dated 21st October, 2020 by the learned Single Judge whereby directing the approval of promotion to the post of Accountant so far as the respondent No.9 is concerned shall be kept pending till the recommendation reaches the approving authority in favour of the writ petitioner for promotion to the post of Cashier.

The right of promotion of non-teaching staff working in the lower division cadre in Government aided colleges governed by the Government Order dated 19th November, 2007 bearing No.915-Edn (C.S.)/5p-77/99 read with 19th November, 2016. The said Government order dated 19th November, 2007 is quoted below:-

“In cancellation of this Department’s Order No.222-Edn (C.S.) dated 22.02.2001, the undersigned is directed by order of the Governor to say that after careful consideration, the Governor has been pleased to prescribe the following rules for recruitment to the post of Head Clerk/Accountant/Cashier in non-Government Colleges in the State:-

- (i) Whenever a vacancy arises in the post of Head Clerk, the post is to be filled up by promotion of an employee of the status of Upper Division Clerk such as Accountant/Cashier etc.*
- (ii) Whenever a vacancy arises in the post of Accountant/Cashier, the post is to be filled up by promotion of an employee belonging to the category of Lower Division Clerk, such as Clerk, Typist, etc.*

In either case, attendance, experience, efficiency, seniority and character roll shall have to be taken into consideration.”

On considering the rival contention of the parties and it appears from the materials on record that respondent No.9 has already been promoted to the post of Accountant by the College Authority with effect from 16th May, 2017. Though the application of the writ petitioner for the promotion to the post of Cashier is kept pending. It is a specific case of the writ petitioner that he is senior to the respondent No.9 in terms of their respective dates of appointment. Therefore, the case of the writ petitioner ought to have been considered for promotion to the post of Cashier prior to considering the case of the respondent No.9 for promotion to the post of Accountant. The anxiety

which has been expressed by the writ petitioner in this writ petition is that if the respondent No.9 is promoted to the post of Accountant prior to the writ petitioner then in the cadre of Upper Division Clerk, the respondent No.9 is to be adjudged as senior to the writ petitioner.

It has been submitted on behalf of the College Authorities that the application of the writ petitioner for promotion to the post of Cashier is pending for consideration before the College authority.

In view of the above facts and circumstances, we direct the concerned authorities of Kandi Raj College to decide the eligibility and entitlement of the writ petitioner to the post of Cashier in terms of the said Government Circular dated 19th November, 2007 read with 19th November, 2016 within a period of four weeks from this date and if it is found that the writ petitioner is suitable for the promotion to the post of Cashier then the writ petitioner to be promoted with effect from the date when the respondent No.9 was promoted to the post of Accountant without financial benefits for the period during which the writ petitioner does not discharge his duty as Cashier of the said College. The aforesaid clarification is on consideration of the fact that admittedly the writ petitioner is senior to the respondent No.9 in terms of their dates of appointment as well as considering the Gradation List of Lower Division Clerk of the said College as well as the relevant part of the said Government circular dated 19th

November, 2007 read with 19th November, 2016 whereas it has been specifically directed that while considering the scope of promotion of Lower Division Clerk to the post of Cashier/Accountant, the attendance, experience, efficiency, seniority and character roll of the respective candidates would be taken care of.

In the above conspectus the concerned authorities of Kandi Raj College is directed to take final decision with regard to promotion of the writ petitioner within the time specified above and, accordingly, the appeal and the applications stand disposed of upon modifying the order of the learned Single Judge which is under appeal.

In view of the above direction, the Director of Public Instruction, Government of West Bengal being the respondent No.4 is directed to accord the approval of promotion which has been made in favour of the respondent No.9 within a period of six weeks from the date of communication of this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)